

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
9

10 FRANCISCO VEGA, JR.,

11 Petitioner,

12 v.

13 CALIFORNIA BOARD OF PAROLE
14 HEARINGS,

15 Respondent.

Case No. 1:21-cv-01029-EPG-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE AND TO
SEND PETITIONER PRISONER CIVIL
RIGHTS COMPLAINT FORM

16 Petitioner Francisco Vega, Jr. is a state prisoner proceeding *pro se* with a petition for writ
17 of habeas corpus pursuant to 28 U.S.C. § 2254. Given that the instant petition is not cognizable
18 in federal habeas corpus, the undersigned recommends that the petition be dismissed without
19 prejudice to refiling the claims in a properly filed civil action brought pursuant to 42 U.S.C.
20 § 1983.

21 **I.**

22 **BACKGROUND**

23 On June 7, 2021, Petitioner filed the instant petition for writ of habeas corpus in the
24 Sacramento Division of the United States District Court for the Eastern District of California.
25 (ECF No. 1). On June 28, 2021, the petition was transferred to the Fresno Division. (ECF Nos. 3,
26 4). In the petition, Petitioner challenges the denial of a youth offender parole suitability hearing.
27 (ECF No. 1 at 5).¹

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DISCUSSION

A. Federal Habeas Corpus Jurisdiction

In the petition, Petitioner challenges the decision to deny him a youth offender parole suitability hearing. (ECF No. 1 at 5). The Court finds that success on Petitioner's claims would not necessarily lead to his immediate or earlier release from confinement. Assuming success on Petitioner's claims would render Petitioner eligible for a youth offender parole suitability hearing, it would not necessarily lead to a grant of parole because under California law, the parole board must consider all relevant reliable information in determining suitability for parole and has the authority to deny parole on the basis of any grounds presently available to it. See Nettles, 830 F.3d at 935. As success on Petitioner's claims would not necessarily lead to his

1 immediate or earlier release from confinement, these claims do not fall within “the core of
2 habeas corpus,” and thus, are not cognizable in federal habeas corpus. See Nettles, 830 F.3d at
3 935. Accordingly, Petitioner has failed to state cognizable claims for federal habeas corpus relief
4 with respect to his claims challenging the denial of a youth offender parole suitability hearing,
5 and dismissal is warranted.

6 **B. Conversion to § 1983 Civil Rights Action**

7 “If the complaint is amenable to conversion on its face, meaning that it names the correct
8 defendants and seeks the correct relief, the court may recharacterize the petition so long as it
9 warns the *pro se* litigant of the consequences of the conversion and provides an opportunity for
10 the litigant to withdraw or amend his or her complaint.” Nettles, 830 F.3d at 936 (quoting Glaus
11 v. Anderson, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes that habeas corpus and
12 prisoner civil rights actions differ in a variety of respects, such as the proper defendants, filing
13 fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation
14 Reform Act’s three-strikes rule). Nettles, 830 F.3d at 936 (citing Robinson v. Sherrod, 631 F.3d
15 839, 841 (7th Cir. 2011); Glaus, 408 F.3d at 388).

16 Due to these differences and the disadvantages that recharacterization may have on
17 Petitioner’s claims, the undersigned finds that it would be inappropriate to construe the habeas
18 petition as a civil rights complaint under 42 U.S.C. § 1983. The Court notes that Petitioner has
19 not been granted *in forma pauperis* status. Therefore, Petitioner would be required to pre-pay the
20 \$402 fee for civil cases (\$350 filing fee plus \$52 administrative fee). Even if granted *in forma*
21 *pauperis* status, Petitioner is required to pay the \$350 filing fee by way of deductions from
22 income to Petitioner’s trust account. See 28 U.S.C. § 1915(b)(1). This conclusion, however, does
23 not preclude Petitioner from pursuing his claims in a properly filed civil action brought pursuant
24 to 42 U.S.C. § 1983.

25 ///

26 ///

27 ///

28 ///

1 **III.**

2 **RECOMMENDATION & ORDER**

3 Accordingly, the undersigned HEREBY RECOMMENDS that the petition for writ of
4 habeas corpus be DISMISSED without prejudice to refiling the claims in a properly filed civil
5 action brought pursuant to 42 U.S.C. § 1983.

6 Further, the Clerk of Court is DIRECTED to randomly assign a District Court Judge to
7 the present matter and to send Petitioner a prisoner civil rights complaint form.

8 This Findings and Recommendation is submitted to the assigned United States District
9 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
10 Rules of Practice for the United States District Court, Eastern District of California. Within
11 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
12 written objections with the court and serve a copy on all parties. Such a document should be
13 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
14 United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28
15 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
16 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
17 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18
19 IT IS SO ORDERED.

20 Dated: **July 1, 2021**

21 /s/ Eric P. Grogg
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28